

TAMMY BALDWIN
WASHINGTON

United States Senate

WASHINGTON, DC 20510

April 6, 2015

COMMITTEE
APPROPRIATIONS

BUDGET

HEALTH, EDUCATION,
LABOR, AND PENSIONS

HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

As you prepare to finalize the Clean Power Plan, I write to highlight the comments submitted by Wisconsin utilities, which focused on modifications that would help our state achieve carbon reductions and transition to a cleaner energy sector under the rule. Our country must respond to climate change and the increasing threats that it poses to our economy, our health, and our way of life. Wisconsin is up to the challenge and can address the threats climate change poses, but I believe you should improve the rule to ensure that the Clean Power Plan works for Wisconsin. Below are four issues raised by Wisconsin utilities that I would strongly urge you to address in the final rule.

First, I encourage you to address concerns about the base emission levels used in the draft rule by considering a multi-year baseline. This would respond to concerns that the current baseline year of 2012 is not representative of the emissions mix in average years, and would recognize the important steps that Wisconsin has already taken to reduce carbon emissions. In Wisconsin, we have already charted a course of sensible action on climate change, and we have the tools necessary to continue this important work. From industrial energy efficiency improvements to weatherization programs to the deployment of renewables, people across our state have rolled up their sleeves and cut emissions, and we have the tools to help us continue that important progress.

Additionally, it is important that the interim goals are used in a constructive way to achieve commitments and benchmarks toward the final emissions goals. However, as they are currently drafted, Wisconsin utilities have concerns that they would be disruptive to good-faith progress towards reductions. I encourage you to consider a set of interim goals tailored to states and regions as they work to address their unique regional issues, and plan for regional responses to reductions.

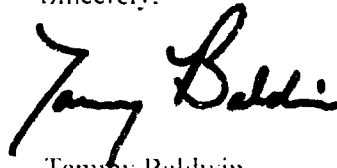
Third, with their commitment to assuring reliable service in even the harshest conditions, Wisconsin's utilities have requested that the plan include a reliability assurance mechanism to direct the grid operator and utilities in abnormal operating conditions and emergency situations. As we make the necessary progress towards reducing emissions, we must continue to ensure that electric consumers have the electric service reliability they depend on.

Finally, Wisconsin utilities are giving serious and deliberate consideration to the advantages that a multi-state compliance option could provide. This is especially important in the Midwest.

where states have already collaborated to achieve emissions reductions, and may benefit from doing so again, to achieve additional reductions while minimizing costs to consumers. I encourage you to address the comments Wisconsin utilities have proposed to the multi-state approach.

The costs and impacts of climate change require that we act swiftly to reduce our carbon emissions. Wisconsin has already charted a path forward to address this issue, and with the same pragmatic, forward thinking that our state is known for, we can continue to make this critical progress. Please give careful consideration to these specifics that will help our state continue this momentum.

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy Baldwin". The signature is fluid and cursive, with the first name "Tammy" written in a larger, more prominent script than the last name "Baldwin".

Tammy Baldwin

AG 15-000-7475



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 30 2015

OFFICE OF
AIR AND RADIATION

The Honorable Tammy Baldwin
United States Senate
Washington, D.C. 20510

Dear Senator Baldwin:

Thank you for your letter of April 6, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Clean Power Plan for existing power plants that was signed by the Administrator on June 2, 2014, and published in the *Federal Register* on June 18, 2014. The Administrator asked that I respond on her behalf.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions. The proposed Clean Power Plan builds on what states, cities and businesses around the country are already doing to reduce carbon pollution and establishes a flexible process for states to develop plans to reduce carbon dioxide that meet their needs. We have placed your comments in the docket for this rulemaking.

We appreciate the constructive comments that have been submitted by the state of Wisconsin, among others, and I assure you we are considering them carefully.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. McCabe", is located below the word "Sincerely,".

Janet G. McCabe
Acting Assistant Administrator



Congress of the United States

House of Representatives

Washington, DC 20515

June 24, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
100 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator McCarthy:

As you are aware, EPA will be hosting a public hearing on June 25, 2015, in Kansas City, Kansas, on the proposed Renewable Fuel Standard (RFS) Renewable Volume Obligations (RVOs). We write to urge you to also hold a public hearing on the proposed RVOs in Nebraska. Nebraska is the second largest ethanol producing state in the nation. Our state's 24 ethanol plants have a collective production capacity in excess of 2 billion gallons. According to a recent economic analysis conducted by the University of Nebraska, ethanol contributes \$5 billion to Nebraska's economy per year and provides Nebraskans with more than 1,300 full time jobs.

Nebraskans, from the producer to the end user, are uniquely positioned to provide EPA with advice on how "constraints in the fuel market" can be overcome, allowing statutory targets to be met. Record corn harvests, 700,000 million bushels of which supply Nebraska's ethanol plants each year, show the supply exists, but excessive government regulation continues to prevent this clean, efficient, and affordable fuel source from reaching consumers. It is imperative EPA meet with and address the concerns of those most impacted by its decision.

The people of Nebraska welcome you to the "Good Life," and we look forward to working with you to bring certainty to this important American industry.

Sincerely,

ADRIAN SMITH
Member of Congress

DEB FISCHER
U.S. Senator

BEN SASSE
U.S. Senator

JEFF FORTENBERRY
Member of Congress

BRAD ASHFORD
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 16 2015

OFFICE OF
AIR AND RADIATION

The Honorable Adrian Smith
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your letter of June 24, 2015, regarding the Renewable Fuel Standard (RFS) program.

Under the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the U.S. Environmental Protection Agency is required to set annual standards for the RFS program each year. The statute requires the EPA to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to gasoline and diesel produced or imported in a given year.

On June 10, 2015, we published a proposed rulemaking that would set the RFS standards for 2014, 2015 and 2016, and the biomass-based diesel standards for 2017. The proposed standards would establish a path for ambitious, achievable growth in biofuels, and help provide the certainty that the marketplace needs to allow these low carbon fuels to further develop. We recognize that the delay in issuing the standards for 2014 and 2015 has led to uncertainty in the marketplace, and we are committed to returning the program to its statutory timeline. To this end, we intend to issue a final rule by November 30, 2015, which will put us back on the statutory schedule for issuing the RFS annual rules.

As you are aware, we held a public hearing on the proposal on June 25, 2015, in Kansas City, KS, where over 200 people provided testimony. We also look forward to hearing the views of stakeholders during the public comment period, which will remain open until July 27, 2015. We encourage all interested parties to provide us with comments on all aspects of the proposed rule. All timely comments submitted, regardless of method of submittal, will receive the same consideration. We have submitted your letter to the rulemaking docket; any additional comments you or your constituents have may be submitted via any of the following methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number EPA-HQ-OAR-2015-0111 in the subject line of the message.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA-HQ-OAR-2015-0111, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Regarding your request for an additional public hearing in Nebraska, our schedule unfortunately will not allow for a second public hearing. We held the June 25th hearing in Kansas to provide a location in close proximity to many of the key agricultural states, and because we achieve significant resource savings by hosting a hearing where the EPA has a regional presence. The EPA Region 7 office (which covers Iowa, Kansas, Missouri, and Nebraska) is located in Kansas City. As a number of stakeholders from Midwestern states—including many from Nebraska—participated in the June 25th hearing, we believe holding the hearing in Kansas City allowed for interested regional perspectives to be heard.

We are optimistic about the future of biofuels and think this proposal will put us on a pathway for steady growth in the years to come.

Again, thank you for your letter. If you have further questions or concerns, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

Congress of the United States

Washington, DC 20510

August 7, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Administrator McCarthy:

We write to request that the Environmental Protection Agency (EPA) work as quickly as possible to undertake the emergency response, water quality testing, and clean-up necessary to mitigate the effects of the Gold King Mine blowout and release of contaminated water in southwest Colorado. The community has expressed serious concerns about the speed and scope of the EPA's initial response.

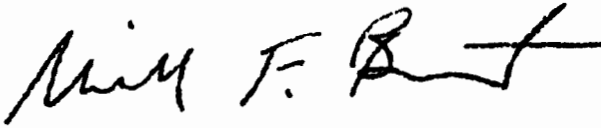
On Wednesday August 5th, the work that the EPA and its contractor were conducting to reopen the portal of the Gold King Mine as part of a clean-up effort caused a blowout of mine sludge. This led to the release of approximately 1 million gallons of contaminated water and sediment into Cement Creek and the Animas River. This acidic water contains potentially hazardous levels of heavy metals and may pose a threat to both people and wildlife.

As a result of this disaster, Sheriff Sean Smith has closed the Animas River to public access across La Plata County and the City of Durango and local irrigation users have shut their water intake valves. Not only does this spill threaten public health, but also it may affect the local tourism and agriculture economies. We've already heard from rafting companies who have lost numerous customers during the busiest part of the season.

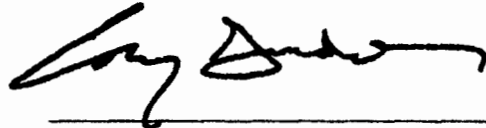
In the short-term, the EPA needs to focus its resources on quickly obtaining water quality test results and protecting against any further releases of polluted water. The EPA must expeditiously communicate the results of this testing and any threats posed by the contaminants to local elected officials, the public, and our offices. EPA must also commit to long-term monitoring and clean-up of the contaminated sediments. Finally, we urge EPA to take full responsibility for this accident, including appropriate compensation to the communities that have been affected by the spill.

Thank you for attention to this matter. We look forward to your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike F. Bennet", written over a horizontal line.

Michael Bennet
United States Senator

A handwritten signature in black ink, appearing to read "Cory Gardner", written over a horizontal line.

Cory Gardner
United States Senator

A handwritten signature in black ink, appearing to read "Scott Tipton", written over a horizontal line.

Scott Tipton
Member of Congress

Scales, Wuanisha

From: Congressman Morgan Griffith (imailagent) <va09mgima@mail.house.gov>
Sent: Wednesday, June 10, 2015 4:22 PM
To: Scales, Wuanisha
Subject: Responding to your message (Intranet Quorum IMA002175781)
Attachments: White EPA Inquiry from Rep. Griffith.pdf, IQFormatFile.txt

MORGAN GRIFFITH

9TH DISTRICT, VIRGINIA

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES:
ENERGY AND POWER
RIGHT AND INVESTIGATIONS
HEALTH

morgangriffith.house.gov

**Congress of the United States****House of Representatives****Washington, DC 20515-4600**

June 10, 2015

1103 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3861 PHONE
(202) 225-0076 FAX

323 WEST MAIN STREET
ABINGDON, VA 24210
(276) 525-1405 PHONE
(276) 525-1444 FAX

17 WEST MAIN STREET
CHRISTIANBURG, VA 24073
(540) 381-5671 PHONE
(540) 381-5675 FAX

Dear Ms. Scales,

I am contacting you on behalf of a constituent. *Example*, who would like me to assist in passing on her concerns about pesticides and environmental pollution. If you have any information about this issue that we could share with her, that would be much appreciated and very helpful.

Enclosed is the pertinent information related to the issue in question. I would appreciate the favor of a timely reply on this matter so that I can ensure that my constituent's issues are being timely reviewed and addressed.

If you have any questions or comments regarding this matter, please feel free to contact me or Christi Harsha from my staff in my Washington, DC office at 202-225-3861. I look forward to hearing from you.

Sincerely yours,

H. MORGAN GRIFFITH
Member of Congress



Please do not reply to this email. The mailbox is unattended.
To share your thoughts please visit my [webpage](#).

Contact:

exempt b

Jonesville, Virginia 24263-0031 VA09

exempt b

Message:

Request for Epidemiological Study & Change in EPA & VDACS Policies and Procedures
RE: Spraying at Suttles & Beech Grove Rd., D. Minor Farm on May 23, 2015 and other dates
ignored by VDACS
Request for Epidemiological Study & Change in EPA & VDACS Policies and Procedures

Dear Congressman Griffith,

I've recently written you before regarding the multiple pesticide exposures from roadside spraying by VDOT's contractor and also our local tobacco farmers and other farms drift that comes onto our organic farm and contaminates ourselves and our animals.

I am writing you today out of desperation and disillusion with the pesticide division of VDACS. I have been documenting the multiple pesticide exposures of myself and our livestock for the past five years. This along with the continued harassment via high frequency weapons has caused my teeth to literally start rotting out of my mouth, I've lost hearing in my right ear and have muscle and bone weakness along with lumps and illness lasting months. We live in the mountains but I have to wear a facemask whenever I go outside because there is no fresh air to breath.

Today, I went out to try and take a bike ride and as I get one half a mile from our house and one half a mile from the David Minor farm and my eyes start burning, my nose clogged up and I started the beginnings of anaphylactic shock. Even though I have photos of the migrant farm workers sitting on the back of the tobacco planter/sprayer, I know that VDACS will fail me yet again. The reason is that EPA has failed to ban these toxic pesticides because their labs were dismantled and all the research is hidden from the public. (Read book Poison Spring)

The DEQ and VDACS refuse to acknowledge that their lab is outdated and the last time they came out they failed to even establish a "Chain of Custody" on the samples they took, therefore letting the bag literally offgas for months. They refuse per my requests, to install a driftcatcher here that would actually catch the drift coming onto our farm. They often refuse to come out and investigate or take over a week to come out at all. Their one employee who is assigned to five counties including ours which is Lee seems to think that homeowners taking it upon themselves to spray the sides of the roads and killing the grass is legal.

Yet when it impedes on our livelihood and drifts from several miles away onto our farm it should be illegal as it involves Chemical warfare by the Pesticide Mafia. But apparently nobody seems to notice that was banned in 1925.

The fact that not only the inert ingredients but the dioxins contained in these pesticides are having permanent and lasting damage on our ecosystem, the river and our species should be reason enough. Yet the EPA has failed to conduct one single Environmental study regarding the effects on these poisons to our environment. As I write this letter, 200 more species will become extinct today as they do everyday.

I am asking for yours and EPA's assistance in getting a driftcatcher installed, an epidemiological study done on this area due to the vast numbers of people on disability in this area and the skyrocketing cancer rates. I am also asking for the access to the EPA's library files on these pesticides being sprayed and an explanation as to why they're failing to provide the people with toxicologists and an up to date laboratory to test for these poisons. As it stands, there is only one toxicologist over six hours from here. The doctors are either uneducated or told to ignore dealing with pesticide exposures.

I have tried writing to the head of VDAC's and the EPA with no avail for several years. Because the EPA is allowing Virginia to apparently police itself when it comes to pesticides, there is no one guarding the hen house.

Instead, I am put on yet another list and am harassed yet again by another agency or neighbor for speaking out and voicing the truth.

Thank you,

Exempt

AL-15001-0034



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 14 2015

The Honorable H. Morgan Griffith
U.S. House of Representatives
Washington, D.C. 20515-4600

Dear Representative Griffith:

Thank you for your June 10, 2015 letter to the U.S. Environmental Protection Agency (EPA) on behalf of your constituent, *Exempt*, regarding her concerns with pesticide drift and her desire that EPA conduct an epidemiological study of the geographic area in which she resides and provide access to Drift Catcher technology.

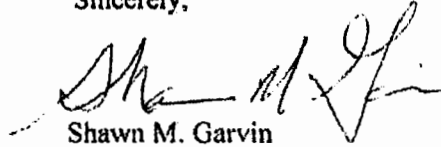
EPA does not conduct epidemiological studies, provide pesticide monitoring equipment or make toxicologists available to the public upon request. However, the National Pesticide Information Center (NPIC) provides objective, science-based information on pesticides and pesticide-related topics to enable the public to make informed decisions about pesticides and their use. In addition, a medical toxicologist is on staff available to consult with physicians about non-emergency pesticide exposure cases. NPIC also provides useful steps to take in the event of animal exposure to pesticides. NPIC staff can be reached by calling 1-800-858-7378 or via: <http://npic.orst.edu/index.html>.

In regard to *Exempt*'s desire to access EPA's pesticide library files, EPA's Office of Pesticide Programs maintains a public website (<http://www2.epa.gov/pesticide-registration>) that includes information related to pesticides registered for use in the United States. In addition, *Exempt* is welcome to contact John Butler, the EPA Region III Pesticide Expert, at 215-814-2127 or butler.john@epa.gov for technical questions related to pesticides.

Finally, VDACS has primary responsibility for investigating pesticide misuse in the Commonwealth of Virginia. *Exempt* can lodge a pesticide complaint by directly contacting Liza Fleeson, Pesticide Program manager for VDACS, at 804-371-6559. Ms. Fleeson will ensure the complaint is addressed, as appropriate.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Matthew Colip, EPA's Virginia Liaison, at 215-814-5439.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn M. Garvin', written over a horizontal line.

Shawn M. Garvin
Regional Administrator

cc: Liza Fleeson, VDACS

SCOTT PERRY
4th District, Pennsylvania

1207 Longworth House Office Building
Washington, DC 20515
(202) 225-5835



TRANSPORTATION AND
INFRASTRUCTURE
HOMELAND SECURITY
FOREIGN AFFAIRS

Congress of the United States House of Representatives

August 20, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy,

When the Environmental Protection Agency (EPA) worked with the National Highway Traffic Safety Administration (NHTSA) on the latest corporate average fuel economy (CAFE) standards and greenhouse gas (GHG) regulations, your Agency granted incentive multipliers to compressed natural gas (CNG) vehicles. At the same time, the EPA chose not to grant liquefied petroleum gas (LPG / propane) vehicles the same multipliers.

The use of incentive multipliers can be very beneficial to original equipment manufacturers (OEMs) trying to meet ambitious and ever more stringent GHG regulations. By allowing OEMs to use existing technologies as they transition to newer, cleaner ones, the EPA has provided some flexibility in the meeting of GHG reduction goals, to be utilized through the incorporation of electric vehicles, plug-in hybrid electric vehicles, and fuel cell vehicles for model years 2017-2021. CNG vehicles were given multipliers due to the argument that they may serve as a bridge to the broader adoption of hydrogen fuel cell vehicles.

EPA's initial justification for the multipliers for CNG vehicles maintains the hydrogen-bridge argument:

"EPA believes these multipliers for CNG vehicles are justified because CNG vehicles and infrastructure indirectly support future commercialization of hydrogen FCVs, which are a potential game-changing GHG emissions technology"¹

EPA goes on to state that:

¹ 77 Fed. Reg. 62816

“...and because CNG vehicles face significant market barriers such as lack of fueling infrastructure, vehicle cost and range, and consumer acceptance.”²

This justification raises significant questions, since these same challenges apply to propane vehicles. Maintaining parity among alternative fuels through the regulatory process must be one of the guiding principles of your rulemaking process. Absent that, your agency is taking on the role of “picking winners and losers” – which never was the Congress’ intent for EPA, especially among similar fuels when setting standards.

Further, the Alliance of Automobile Manufacturers, Association of Global Automakers, and the Ford Motor Company all recommended that propane vehicles qualify for incentive multipliers. The EPA chose to reject these requests.

Maintaining balance in the alternative fuels marketplace is essential. All alternative fuels are competing for market share in a well-established sector, and the EPA’s decision to exclude the use of incentive multipliers for propane vehicles distorts the alternative fuel marketplace.

Of particular note, in the final rule, EPA attempts to address the “winners and losers” criticism. The use of incentive multipliers is justified by:

“There are major barriers for new vehicle technologies and fuels to be able to gain the opportunity to compete on any type of level playing field. In this context, temporary regulatory incentives do not so much “pick winners and losers” (an inefficient or unattractive technology is not going to achieve long-term success based on temporary incentives) as to give new technologies more of an opportunity to compete with the established technologies.”³

But, by granting the incentive multiplier to CNG and other alternative fueled vehicles, EPA has eliminated the opportunity for propane to compete and ultimately leaves consumers with fewer options.

If the EPA is going to set stringent GHG standards, the automakers who must comply may take advantage of existing technologies, like CNG, to meet these requirements. However, EPA’s involvement in the regulation of our nation’s auto fleet should not preclude alternative fuels, like propane, from competing in the marketplace.

Please respond to the following questions by September 20, 2015:

1. As noted above, EPA states in the final rule that *regulatory incentives do not so much pick “winners and losers” (an inefficient or unattractive technology is not going to achieve long-term success based on temporary incentives)*. How does EPA reconcile this

² Id.

³ 77 Fed. Reg 62812

statement, which suggests that the marketplace will determine who wins and loses, with EPA's action to preclude the use of these incentive multipliers for propane vehicles, thereby prohibiting propane vehicles from competing in the marketplace on a level playing field?

2. EPA details in the preamble of the final rule that the objective of incentive multipliers is to encourage certain "game changing" vehicle technologies in the light duty market. EPA acknowledges in consideration of CNG technology that while the advancements of CNG don't qualify as "game changing" to the Agency, potential developments derived from the technology and public acceptance of CNG vehicles could lead to "game changers." Please explain how propane, for which no direct global warming potential can be calculated (unlike natural gas) may not also "promote penetration of certain "game changing" vehicle technologies."

3. In the final rule, EPA provides several examples of CNG technology and infrastructure requirements serving to facilitate a transition to adoption of hydrogen fuel cell vehicles. In most of the examples described by EPA, alternative technology and infrastructure designs for propane vehicles similarly serves to advance hydrogen fuel cell vehicles. Does the Agency believe that research and development of two alternative fuels can accelerate innovation and public adoption for hydrogen fuel cell vehicles?

Thank you for your cooperation. If you have any questions please feel free to contact John Drzewicki at John.Drzewicki@mail.house.gov or at (202) 225-5836.

Sincerely,

Scott Perry
Member of Congress

United States Senate

OFFICE OF THE CLERK
UNITED STATES SENATE
WASHINGTON, D.C. 20540-5100

May 27, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator McCarthy:

I write to express concern about the Environmental Protection Agency's (EPA) Clean Power Plan proposal, which would set greenhouse gas emission targets for states to meet by 2030.¹ The proposal raises a number of legal concerns and, if finalized, will likely force energy rates to skyrocket nationwide. In fact, the resulting increase in energy prices would hit Wisconsin families particularly hard. In light of these concerns, I ask for your help in better understanding the rationale behind the EPA's proposed Clean Power Plan.

As you know, citing its authority under the Clean Air Act, the EPA announced its Clean Power Plan on June 18, 2014.² The Clean Power Plan would set state-by-state benchmarks for carbon emission reduction over the next 15 years.³ The proposal sets the emission targets for states and ultimately leaves it up to each state to decide how to meet the EPA's mandates.⁴

According to prominent legal experts, the proposal appears to be unconstitutional. Harvard Law School Professor Laurence Tribe stated that the EPA's Clean Power Plan is an "assert[ion] of executive power far beyond its lawful authority."⁵ In testimony to Congress he argued that by forcing states to meet the EPA's emission mandates, the proposal would "lock states into a framework where the goals are set by EPA, the means to be used to achieve these goals are set by EPA, and even the 13-month timetable for the enactment and implementation of new [state] legislation is set by EPA."⁶ Professor Tribe explained that Supreme Court precedent

¹ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,830 (proposed June 18, 2014) (to be codified at 40 C.F.R. pt. 60), <https://www.federalregister.gov/articles/2014/06/18/2014-13726/carbon-pollution-emission-guidelines-for-existing-stationary-sources-electric-utility-generating#h-24>.

² *Id.*

³ *Id.* at 34,832.

⁴ *Id.* at 34,833.

⁵ Laurence H. Tribe, *The Clean Power Plan is Unconstitutional*, WALL STREET JOURNAL, Dec. 22, 2014, <http://www.wsj.com/articles/laurence-tribe-the-epas-clean-power-plan-is-unconstitutional-1419293203>.

⁶ *EPA's Proposed 111(d) Rule For Existing Power Plants: Legal and Cost Issues Before Subcomm. on Energy and Power, H. Comm. on Energy and Commerce*, 114th Cong. 16 (Mar. 17, 2015) (statement of Laurence H. Tribe, Professor of Constitutional Law, Harvard Law School), <http://docs.house.gov/meetings/IF/IF03/20150317/103073/HHRG-114-IF03-Wstate-TribeL-20150317-U1.pdf>.

prevents “such federal commandeering of state governments, ...which defeats political accountability and violates principles of federalism.”⁷

The Supreme Court’s commandeering doctrine is applicable to the EPA’s Clean Power Plan because the plan will force states to legislate or regulate in order to achieve the EPA’s carbon reduction benchmarks. If the Clean Power Plan is implemented, voters will electorally hold state officials responsible for increased energy costs caused by the rule “while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision.”⁸

In addition to the constitutional issues, the Clean Power Plan ignores the plain language of the Clean Air Act. Section 111(d) of the Clean Air Act authorizes the EPA to establish emission standards for air pollutants that are *not* regulated under Section 112 of the statute.⁹ Section 112 of the Clean Air Act authorizes the EPA to regulate “major sources” that emit air pollutants, including power plants.¹⁰ In 2000 and 2012, EPA used its Section 112 authority to implement emission standards for the same power plants that it now seeks to regulate under the Clean Power Plan.¹¹ Because the EPA cites Section 111(d) of the Clean Air Act as its statutory authority for the Clean Power Plan,¹² and power plants are already regulated under Section 112 of the Clean Air Act,¹³ the Clean Power Plan appears to violate the text of the Clean Air Act.

Further, the Clean Power Plan will likely cause significant economic harm to many states, including Wisconsin. According to one study, Wisconsin would lose nearly 21,000 jobs by 2030 if the EPA implements its proposal as written.¹⁴ That same study estimates that the loss of jobs, combined with increased energy costs, will reduce real disposable income in Wisconsin by \$1.82 billion by 2030.¹⁵ Further, the Public Service Commission of Wisconsin estimates the Clean Power Plan will cost the state between \$3.8 and \$13.9 billion from 2017 to 2033.¹⁶

⁷ *Tribe, supra* note 5 (citing *New York v. United States*, 505 U.S. 144, 175 (1992)). See also *FERC v. Mississippi*, 456 U.S. 742, 761-62 (1982).

⁸ *New York*, 505 U.S. at 169.

⁹ 42 U.S.C. § 7411(d).

¹⁰ 42 U.S.C. § 7412.

¹¹ 56 Fed. Reg. 79,825, 79,830 (Dec. 20, 2000) (EPA categorizing stationary power plants as part of a “source category” under Section 112 of the Clean Air Act); 77 Fed. Reg. 9,304 (Feb. 16, 2012) (setting national emission standards for power plants under Section 112 of the Clean Air Act); see also *Comments of Laurence H. Tribe and Peabody Energy Corporation* at 17, Docket ID No. EPA-HQ-OAR-2013-0602, Dec. 1, 2014 [http://www.massevgail.com/pdf/Tribe-Peabody_111\(d\)_Comments_\(filed\).pdf](http://www.massevgail.com/pdf/Tribe-Peabody_111(d)_Comments_(filed).pdf).

¹² 79 Fed. Reg. 34830.

¹³ See *Am. Elec. Power Co. v. Connecticut*, 131 S.Ct 2527, 2537 n.7 (2011) (noting that “EPA may not employ §7411(d) [Clean Air Act Section 111(d)] if existing stationary sources of the pollutant in question are regulated under the . . . ‘hazardous air pollutants’ program, §7412 [Clean Air Act Section 112]”); see also *Tribe, supra* note 5.

¹⁴ *The Economic Effects of the New EPA Rules on the State of Wisconsin*, BEACON HILL INSTITUTE AT SUFFOLK UNIVERSITY AND JOHN MACLVER INSTITUTE, Jan. 2015, <http://static.maclverinstitute.com/EPA%20Rules%20W1%20-%20MacIver%20Beacon%202015%20FINAL.pdf>.

¹⁵ *Id.*

¹⁶ *Wisconsin Congressional Delegation Briefing*, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, Apr. 21, 2015.

The Honorable Gina McCarthy
 May 27, 2015
 Page 3

The Clean Power Plan will also significantly raise energy prices on Wisconsin consumers and businesses. According to a study, the rule would increase residential energy rates in Wisconsin by up to 28 percent, increasing the average annual energy costs for a Wisconsin household by more than \$485 by 2020.¹⁷ Under the Clean Power Plan, industrial power rates in Wisconsin are projected to increase by 41 percent by 2020.¹⁸ All told, the total annual statewide cost of power and gas in Wisconsin will grow to a projected \$14 billion by 2020 if the EPA's proposal is finalized.¹⁹

In order to inform the Committee's oversight of the efficiency of federal programs and regulatory affairs, please provide the following information and material:

1. Does EPA take into account projected increases in energy prices on consumers as a "cost" of its proposed regulations? If not, please explain why not.
2. Wisconsin has reduced its carbon emissions by 20 percent since 2005.²⁰ The Wisconsin Department of Natural Resources estimates that under the rule, Wisconsin will need to reduce its carbon dioxide (CO₂) emission rate by an additional 34 percent from 2012 to 2030.²¹ According to the Public Service Commission of Wisconsin, the Clean Power Plan "fails to recognize the CO₂ reductions that Wisconsin (and other early acting states) has already achieved."²² Is EPA planning to account for states that have already significantly reduced carbon emissions? Please explain.
3. Wisconsin currently receives approximately 60 percent of its electricity from coal.²³ How can EPA ensure that compliance with the rule will not disrupt the reliability of the state's electrical grid? Please explain.
4. The Clean Power Plan requires states to promulgate their own plans to meet EPA's carbon reduction benchmarks and submit them to the EPA for approval by June 2016.²⁴

¹⁷ Energy Ventures Analysis, *Energy Market Impacts of Recent Federal Regulations on the Electric Power Sector – State Impact: Wisconsin*, Sept. 26, 2014, http://evainc.com/wp-content/uploads/2014/11/2014_EVA-State_Facts-Wisconsin.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Letter from the Hon. Scott Walker, Governor, Wisconsin, to the Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Dec. 1, 2014), 1, <http://walker.wi.gov/sites/default/files/documents/12-1-14%20EPA.pdf>

²¹ Wisconsin Department of Natural Resources, *supra* note 16.

²² Letter from Pub. Serv. Comm'n of Wis. to the Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency, (Nov. 30, 2014), 3, <http://static.maciverinstitute.com/12-1-14%20DNR%20PSC%20EPA%20Letter.pdf>.

²³ *Wisconsin's Comments on Clean Power Plan*, 4, Docket ID No. EPA-HQ-OAR-2013-0602, Nov. 30, 2014, <http://static.maciverinstitute.com/12-1-14%20DNR%20PSC%20EPA%20Letter.pdf>.

²⁴ North American Electric Reliability Corporation, *Potential Reliability Impacts of EPA's Proposed Clean Power Plan* at 5, Nov. 2014, http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf.

- a. What consequences will occur if a state fails to formulate such a plan by the deadline?
 - b. How is the EPA's proposed enforcement mechanism consistent with the U.S. Supreme Court's holding in *New York v. United States*?²⁵
 - c. Please provide the EPA's legal analysis of how the Clean Power Plan is consistent with Supreme Court precedent in *New York v. United States* and other appeals.
5. EPA has acknowledged that the plain text of Section 111(d) of the Clean Air Act expressly forbids the regulation of power plants that are already regulated under Section 112 of the statute.²⁶ The Clean Power Plan seeks to regulate power plants that are already regulated under Section 112 of the Clean Air Act.²⁷ Given this fact, how is the Clean Power Plan authorized under Section 111(d) of the Clean Air Act? Please provide all documents and communications referring or relating to the EPA's evaluation of how the Clean Power Plan is consistent with congressional intent under the Clean Air Act.

Please provide this material as soon as possible but no later than 5:00 p.m. on June 10, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency and economy of operations of all branches of the Government."²⁸ Additionally, S. Res. 73 (114th Congress) authorize the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."²⁹ For purposes of responding to this request, please refer to the definitions and instructions in the enclosure.

²⁵ 505 U.S. 144.

²⁶ See 79 Fed. Reg. 34844 (proposed June 18, 2014) (to be codified at 40 C.F.R. pt. 60) ("When the EPA establishes NSPS for new sources in a particular source category, the EPA is also required, under CAA section 111(d)(1), to prescribe regulations for states to submit plans regulating existing sources in that source category for any air pollutant that, in general, is not regulated under the CAA section 109 requirements for the NAAQS or regulated under the CAA section 112 requirements for hazardous air pollutants (HAP)").

²⁷ See note 11, *supra*.

²⁸ S. Rule XXV(k); see also S. Res. 445, 108th Cong. (2004).


²⁹ S. Res. 73 § 12, 114th Cong. (2015).

15000-9396

The Honorable Gina McCarthy
May 27, 2015
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If you have any questions about this request, please contact Kyle Brosnan or Scott Wittmann of the Committee staff at (202) 224-4751. Thank you for your attention to this important matter.

Sincerely,


Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Enclosure

Instructions for Responding to a Committee Request

A. Responding to a Request for Documents

1. In complying with the Committee's request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request shall be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

Instructions for Responding to a Committee Request

- e. Alternatively if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets shall also be provided in their native form. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
 7. Documents produced in response to the request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
 9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
 11. All documents shall be Bates-stamped sequentially and produced sequentially. Each page shall bear a unique Bates number.
 12. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 344 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided on that date.

Instructions for Responding to a Committee Request

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
18. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, you are required to answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Persons that knowingly withhold requested information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request shall be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests shall be made in writing and shall be signed by you, your counsel, or a duly authorized designee.
4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any

Instructions for Responding to a Committee Request

- other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. It shall not be a basis for refusal to provide knowledge, information, or facts that any other person or entity also possesses the same knowledge, information, or facts.
 7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it has not been known by the return date, shall be provided immediately upon subsequent discovery.
 8. Two sets of responses shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies shall be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 344 of the Dirksen Senate Office Building.
 9. If compliance with the request cannot be made in full by the date specified in the request, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided on that date.
 10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
 11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to provide the information that would be responsive as if the date or other descriptive detail was correct.
 12. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

C. Definitions

1. The term "document" in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and

Instructions for Responding to a Committee Request

investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms "and" and "or" in the request or the instructions shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify" in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The terms "referring" or "relating" in the request or the instructions, when used separately or collectively, with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

#



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 10 2015

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of May 27, 2015, regarding the U.S. Environmental Protection Agency's proposed Clean Power Plan for existing power plants, which was signed by Administrator McCarthy on June 2, 2014, and published in the *Federal Register* on June 18, 2014.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions. The proposed Clean Power Plan builds on what states, cities, and businesses around the country are already doing to reduce carbon pollution and establishes a flexible process for states to develop plans to reduce carbon dioxide that meet their needs. We have placed your comments in the docket for this rulemaking.

The EPA did consider electricity price impacts in developing the proposal. Because states will ultimately determine what measures to employ to implement the rule, the Regulatory Impact Analysis accompanying the proposal (<http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule-regulatory-impact-analysis>) included illustrative estimates of electricity price effects. For example, because energy efficiency is such a smart, cost-effective, and well-demonstrated compliance strategy, we project that, in 2030, average electricity bills for American families will be 8 percent lower than they are projected to be without the Clean Power Plan.

In the proposal, as well as the accompanying notice of data availability (79 Fed. Reg. 64543) in support of the proposed rule, the EPA requested comment on whether 2012 was the appropriate year to use in calculating the state goals, and on whether and how to account for states that took early action. We are reviewing the many comments on those subjects as we work towards a final rule.

History has shown that we can clean the air and grow the economy, all without threatening reliability. We have participated in the technical conferences hosted by the Federal Energy Regulatory Commission (FERC) and engaged FERC Commissioners and staff throughout this process, as well as meeting with grid operators, utilities, states, and other stakeholders to discuss reliability. We received many comments

on the proposal's potential effect on reliability and are in the process of reviewing those as we work towards a final rule that will tackle this public health challenge while ensuring reliability.

Under Section 111(d) the EPA is proposing a two-part process where the EPA sets state-specific goals to lower carbon pollution from power plants, and then the states must develop plans to meet those goals. States develop plans to meet their goals, but the EPA is not prescribing a specific set of measures for states to put in their plans. This gives states flexibility. States will choose what measures, actions, and requirements to include in their plans, and demonstrate how these will result in the needed reductions. The Clean Air Act provides for the EPA to write a federal plan if a state does not put an approvable state plan in place. In response to requests from states and stakeholders since the proposed Clean Power Plan was issued, the EPA announced in January 2015 that we will be starting the regulatory process to develop a rule that would set forth a proposed federal plan and could provide an example for states as they develop their own plans. The EPA fully expects that, as contemplated by the Clean Air Act, states will want to submit their own plans, and will use that as an opportunity to tailor their plans to their specific needs and priorities. The agency expects to issue the proposed federal plan for public review and comment in summer 2015.

Along with the proposed rule, the EPA included in the docket a Legal Memorandum providing background for the legal issues raised by the rule. That document can be found using Docket ID Number EPA-HQ-OAR-2013-0602-0419. The Legal Memorandum details the EPA's understanding, at the time of proposal, of both the issues related to the federal enforceability of state plan provisions and any potential ambiguity arising from Congress's simultaneous enactment of two separate versions of this provision. The EPA is currently reviewing the more than 4.3 million comments received on the proposal, including the comments on the issues addressed in the Legal Memorandum, and will respond to the issues raised in those comments when we issue a final Clean Power Plan.

We look forward to discussing these critical issues further with your staff, and we are committed to working together collaboratively to accommodate Congress' important oversight function. However, portions of your request relate to an ongoing regulatory action, a status that raises particular concerns regarding the independence and integrity of ongoing agency deliberations. Some of the documents you seek are likely to reflect internal advice, recommendations, and analysis by agency staff and attorneys about the proposal. These internal and pre-decisional deliberations are likely to be the subject of additional discussions and analysis among agency staff and senior policymakers during the finalization of the Clean Power Plan, when the agency takes the important step of considering comments from various stakeholders—including comments from Members of Congress, if any. It is critical for agency policymakers to obtain a broad range of advice and recommendations from agency staff and to be able to execute their statutory obligations under the Clean Air Act and other environmental statutes properly. Disclosure of pre-decisional information at this stage of the deliberations could raise questions about whether the agency's decisions are being made or influenced by proceedings in a legislative or public forum, rather than through the established administrative process, which is ongoing. In addition, disclosure of such information risks compromising the ability of agency employees to provide candid advice and recommendations during the agency's ongoing deliberative process. It could also chill the candor of future Executive Branch deliberations, making the rulemaking process less robust and limiting the agency's ability to carry out its mission.

15-000-9396

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Relations at Dickerson.Tom@epa.gov or at 202-564-3638.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Vaught". The signature is fluid and cursive, with a large, stylized "L" and "V".

Laura Vaught
Associate Administrator

cc: The Honorable Thomas R. Carper
Ranking Member

Congress of the United States

Washington, DC 20515

June 15, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator McCarthy:

We write to urge you to host a public hearing in Iowa on the proposed Renewable Fuel Standard (RFS) Renewable Volume Obligations (RVOs), as our state leads the nation in biofuels production. In 2013 alone, Iowa produced nearly 3.8 billion gallons of clean burning ethanol and 230 million gallons of biodiesel. Iowa is also home to two new cellulosic ethanol facilities, with another coming into production later this year, and boasts retailers across the state that offer ethanol and biodiesel blends to consumers.

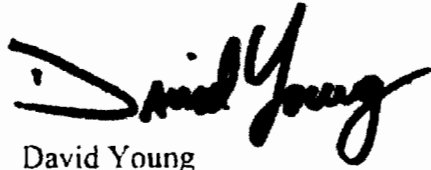
The EPA's long delay in issuing RVOs for 2014, 2015 and 2016, and its decision to deviate from the levels set by Congress has created uncertainty for the biofuels industry and hampered investment. The flawed justification that the EPA uses to defend the proposed levels, especially related to ethanol, raises questions about the agency's commitment to renewable fuels.

Unfortunately, despite having 18 months to listen to stakeholders and consider comments, the EPA's proposed RVOs fall short. Thus, we strongly encourage you to add a public hearing in Iowa that would enable EPA officials to hear from Iowans who work in and contribute to the biofuels industry. Iowa industry leaders, farmers, retailers and consumers are well positioned to provide valuable information and substantive feedback on how the proposed RVOs will negatively impact the agricultural and biofuels industries, consumer choice at the pump, and future investments in 2nd generation renewable fuels and infrastructure.

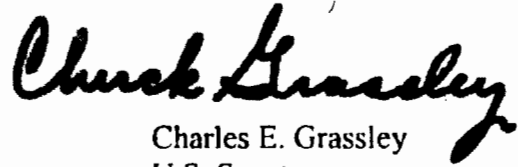
It is important for any federal agency to fully understand the implications of their rulemaking. We hope you will listen to Iowans who can provide technical and expert opinions on the workings of the RFS, solutions to the so-called challenges the EPA identified, and respond to flawed blend wall and infrastructure justifications.

Thank you for your consideration and we look forward to seeing you in Iowa.

Sincerely,



David Young
Member of Congress



Charles E. Grassley
U.S. Senator



Steve King
Member of Congress



Joni K. Ernst
U.S. Senator



Dave Loebsack
Member of Congress



Rod Blum
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 15 2015

U.S. DEPT. OF
ENERGY

The Honorable Steve King
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman King:

Thank you for your letter of June 15, 2015, regarding the Renewable Fuel Standard (RFS) program.

Under the Clean Air Act, as amended by the Energy Independence and Security Act of 2007, the U.S. Environmental Protection Agency is required to set annual standards for the RFS program each year. The statute requires the EPA to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels that apply to gasoline and diesel produced or imported in a given year.

On June 10, 2015, we published a proposed rulemaking that would set the RFS standards for 2014, 2015 and 2016, and the biomass-based diesel standards for 2017. The proposed standards would establish a path for ambitious, achievable growth in biofuels, and help provide the certainty that the marketplace needs to allow these low carbon fuels to further develop. We recognize that the delay in issuing the standards for 2014 and 2015 has led to uncertainty in the marketplace, and we are committed to returning the program to its statutory timeline. To this end, we intend to issue a final rule by November 30, 2015, which will put us back on the statutory schedule for issuing the RFS annual rules.

We held a public hearing on the proposal on June 25, 2015, in Kansas City, KS, where over 200 people provided testimony. We also look forward to hearing the views of stakeholders during the public comment period, which will remain open until July 27, 2015. We encourage all interested parties to provide us with comments on all aspects of the proposed rule. All timely comments submitted, regardless of method of submittal, will receive the same consideration. We have submitted your letter to the rulemaking docket; any additional comments you or your constituents have may be submitted via any of the following methods:

- Federal eRulemaking portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov. Include docket ID number EPA-HQ-OAR-2015-0111 in the subject line of the message.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA-HQ-OAR-2015-0111, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

- **Hand Delivery or Courier:** Deliver your comments to: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Regarding your request for an additional public hearing in Iowa, our schedule unfortunately will not allow for a second public hearing. We held the June 25th hearing in Kansas to provide a location in close proximity to many of the key agricultural states, and because we achieve significant resource savings by hosting a hearing where the EPA has a regional presence. The EPA Region 7 office (which covers Iowa, Kansas, Missouri, and Nebraska) is located in Kansas City. As a number of stakeholders from Midwestern states—including many from Iowa—participated in the June 25th hearing, we believe holding the hearing in Kansas City allowed for interested regional perspectives to be heard.

We are optimistic about the future of biofuels and think this proposal will put us on a pathway for steady growth in the years to come.

Again, thank you for your letter. If you have further questions or concerns, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,



Janet G. McCabe
Acting Assistant Administrator

Congress of the United States
Washington, DC 20515

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

On November 25, 2014, you issued a proposed rulemaking to tighten the existing National Ambient Air Quality Standard (NAAQS) for ozone from 75 parts per billion (ppb) to a range between 60 and 70 ppb.¹ While we have numerous objections to the proposed rule, today we write specifically regarding background ozone. The ozone levels you have proposed would be unachievable for many states with already high levels of background ozone.

Ozone background levels are caused by natural sources and foreign emissions. The proposed federal standard and accompanying regulatory impact analysis (RIA) acknowledge the challenges caused by ozone background levels, including in western states. The rule states that there are times when ozone levels “approach or exceed the concentration levels being proposed in this notice (i.e., 60-70 ppb) in large part due to background sources.”²

The RIA further explains that background ozone is a relatively larger percentage (e.g., 70-80%) of the total seasonal mean ozone in locations within the intermountain western U.S. and along the U.S. border.³ In many of these areas, attaining a lower standard may be impossible, regardless of technology. Rural areas in particular simply do not have as many local emission sources to control. A nonattainment designation could end up being permanent, causing significant economic harm to local economies.

While the proposed rule attempts to address some of these concerns by suggesting that affected areas can seek exemptions, our experience petitioning EPA shows that it can be a resource intensive, lengthy process with an uncertain outcome. For example, given the reoccurring high ozone background levels in some regions, it will be difficult to show that the measured ozone levels exceed “normal historical fluctuations” as required by EPA’s current rules.⁴

EPA’s Clean Air Scientific Advisory Committee (CASAC) also struggled with addressing the high ozone background levels in formulating its recommendations to the Agency on a new standard. The Committee noted in its final letter to EPA that the Agency had failed to

¹ EPA’s National Ambient Air Quality Standards for Ozone, Proposed Rule, 79 FR at 75,234.

² *Id.* at 75,382.

³ EPA’s draft Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ozone p. 2-16, available at <http://www.epa.gov/ttn/ecas/regdata/RIAs/2014/125ria.pdf>.

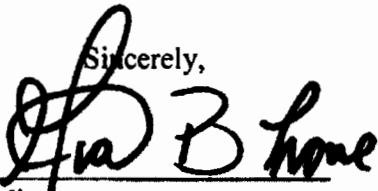
⁴ *Id.* at 3A-60 (referencing EPA’s existing Exceptional Events Rule).


provide key advice on how background levels should be considered.⁵ EPA's failure to provide this critical advice to those impacted by the rule is a significant weakness that must be considered in evaluating CASAC's recommended range.

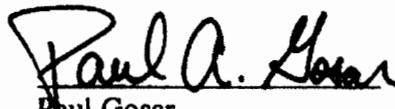
The proposed rule confirms that EPA can consider proximity to background levels in setting a new standard, as it should. However in this case, the current proposal sets some states up to fail due to background ozone beyond their control. This reinforces our belief that the proposed ozone rule is flawed and should be withdrawn.

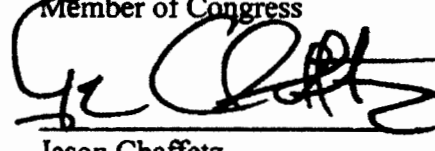
At a minimum, EPA should not revise the ozone standard until it has assessed and published for public comment the impact of its planned revisions to its Exceptional Events policy, and the extension of that policy to the ozone monitoring season. Without this information, neither EPA nor the public can assess the impact of what EPA is asking western and border states to do.

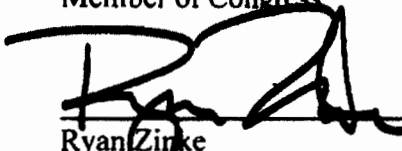
Sincerely,

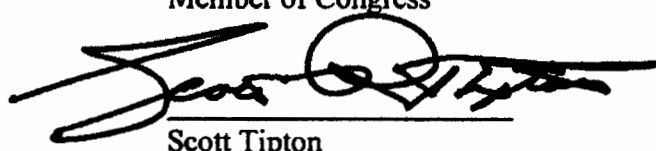

Mia Love
Member of Congress

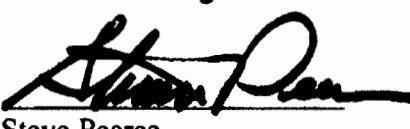

Cynthia Lummis
Member of Congress

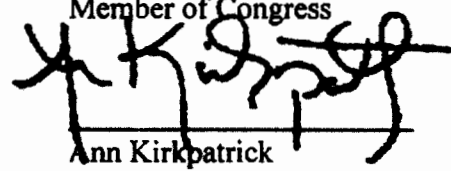

Paul Gosar
Member of Congress

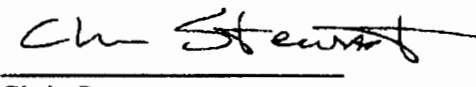

Jason Chaffetz
Member of Congress

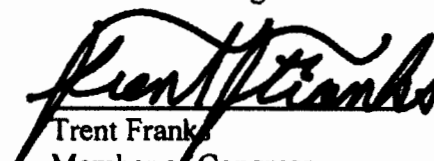

Ryan Zinke
Member of Congress


Scott Tipton
Member of Congress

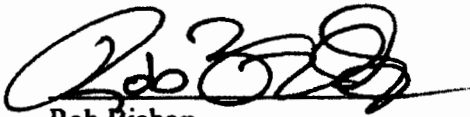

Steve Pearce
Member of Congress


Ann Kirkpatrick
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Chris Stewart
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Trent Franks
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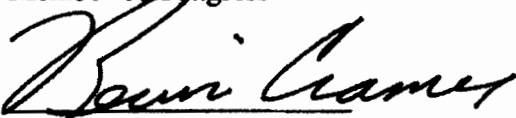
⁵ CASAC letter, available at [http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/\\$File/EPA-CASAC-14-004+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/$File/EPA-CASAC-14-004+unsigned.pdf)



Rob Bishop
Member of Congress



David Schweikert
Member of Congress



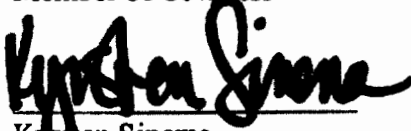
Kevin Cramer
Member of Congress



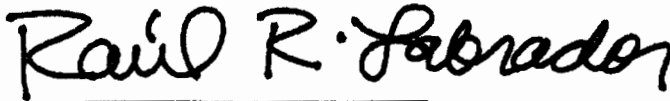
Cresent Hardy
Member of Congress



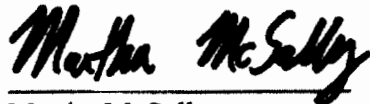
Doug Lamborn
Member of Congress



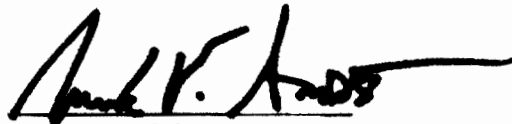
Kyrsten Sinema
Member of Congress



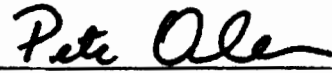
Raúl Labrador
Member of Congress



Martha McSally
Member of Congress



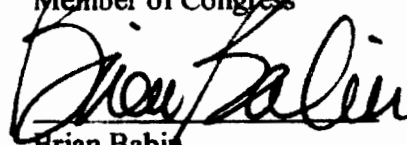
Mark Amodei
Member of Congress



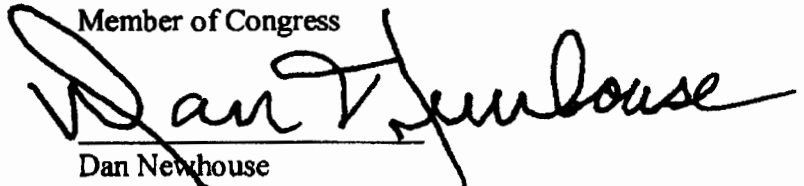
Pete Olson
Member of Congress



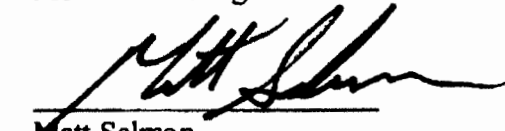
Steven Palazzo
Member of Congress



Brian Babin
Member of Congress



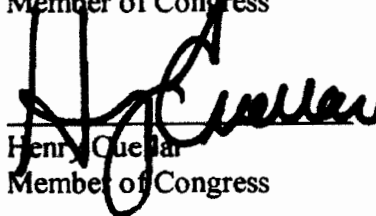
Dan Newhouse
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Matt Salmon
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Ken Buck
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Henry Cuellar
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